

95 CV 00442-NG-MO
93 CV 01679-NG-MO
87 CV 02702-NG-MO

D/F
C/M

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOHN P. BRADY,

Plaintiff,

- against -

**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY,**

Defendant.

**MEMORANDUM
AND ORDER**

87 CV 2702 (NG)(CLP)

93 CV 1679 (NG)(CLP)

95 CV 0442 (NG)(CLP)

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GERSHON, United States District Judge:

In three consolidated actions, plaintiff John P. Brady sues his employer, the Port Authority of New York and New Jersey ("Port Authority"), for job discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), 42 U.S.C. § 1981 and New York state law. Plaintiff's motion to amend the complaint to add a claim under 42 U.S.C. § 1983 and the Port Authority's request to strike any claims for punitive damages were referred to the Honorable Cheryl L. Pollak, Magistrate Judge. In a Report and Recommendation and Supplemental Report and Recommendation, Magistrate Judge Pollak concluded that plaintiff's motion to amend his complaint to add the Section 1983 claim should be granted and that the Port Authority's request to strike plaintiff's claims for punitive damages also should be granted. Objections have been filed. Upon *de novo* review, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, the conclusions of Magistrate Judge Pollak are adopted.

Motion to Amend the Complaint

Plaintiff's motion to file an amended complaint to add a claim pursuant to 42 U.S.C. § 1983 was ably analyzed by Magistrate Judge Pollak. Her analysis and her conclusions are

adopted in their entirety. Plaintiff's proposed Section 1983 claim states a claim and relates back to the claims first raised in plaintiff's 1987 complaint. Defendant's objections are rejected and, for the reasons set forth by Magistrate Judge Pollak, the motion to file an amended complaint is granted.

Motion to Strike Punitive Damages

Plaintiff seeks an award of punitive damages against the Port Authority under Section 1983 and state common law. The Court of Appeals for this Circuit has not yet addressed the issue raised by the Port Authority, namely, whether it is immune from punitive damages.¹

The Port Authority does not contest that it acts under color of state law and therefore can be held liable under Section 1983 so long as the requirements of *Monell v. Department of Soc. Serv.*, 436 U.S. 658 (1978), which sets forth the requirements of municipal liability under Section 1983, are met. It asks here that it be afforded the immunity from punitive damages which the Supreme Court has held applies to municipalities under Section 1983 as well as under common law. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

In *City of Newport*, the Court recognized that "municipal immunity from punitive

¹ In addition to Magistrate Judge Pollak, other judges in this Circuit have concluded that the Port Authority is immune from punitive damages. *See, e.g., Shifa Services, Inc. v. Port Authority of New York and New Jersey*, 1997 WL 563301 (S.D.N.Y.); *Rose v. Port Authority of New York and New Jersey*, 1998 WL 400107 (S.D.N.Y.) (following *Shifa*); *Recreation World, Inc. v. Port Authority of New York and New Jersey*, 1998 WL 107362 (S.D.N.Y.) (same). *But see Kondakjian v. Port Authority of New York and New Jersey*, 1996 WL 280799 (S.D.N.Y.). In the Third Circuit, the Port Authority has been held to be immune from punitive damages. *See King v. Port Authority of New York and New Jersey*, 909 F. Supp. 938, 947 (D.N.J. 1995); *aff'd*, 106 F.3d 385 (3rd Cir. 1996).

damages was well established at common law” when the Civil Rights Act of 1871 established a Section 1983 action. 453 U.S. at 263. It then observed the absence of evidence that Congress intended to disturb this immunity for municipalities, *see id.* at 263-65, and went on to examine whether “considerations of public policy dictate[d] a contrary result.” *Id.* at 266. It noted that “[p]unitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct.” *Id.* at 266-67. With regard to retribution, the Court held that an “award of punitive damages against a municipality ‘punishes’ only the taxpayers, who took no part in the commission of the tort,” and it expressed concern that punitive damage awards against municipalities would result in “an increase in taxes or a reduction of public services for the citizens footing the bill.” *Id.* at 267. The Court also questioned whether punitive damage awards against municipalities would be effective as a deterrent, observing that other methods of deterrence were already available. *See id.* at 268. It noted that, in addition to assessing punitive damages against the offending officials themselves, those officials, whose violations result in compensatory damages that must be paid with municipal funds, could be discharged or defeated at the polls. *See id.* at 268-70. Finally, the Court expressed concern that allowing punitive damage awards against municipalities “may create a serious risk to the financial integrity of these governmental entities.” *Id.* at 270. Compared to the limited benefits of imposing punitive damages against municipalities, the Court found that “the costs may be very real.” *Id.*

The Port Authority seeks the benefit of the historical immunity from punitive damages afforded to municipalities on the ground that, because it is a “government entity” which

“provides public functions and public uses,” an award of punitive damages would create a “clear potential harm to the general public.” Punitive damage awards, it argues, would punish the public, which would have to pay increased tolls and fares for the Port Authority’s services and would create a risk to the Port Authority’s financial integrity.

In *Shifa*, Judge Allen G. Schwartz concluded that, “In light of the Port Authority’s numerous public functions and governmental character, the immunity from punitive damages enjoyed by all levels of government in 1871 [when Section 1983 was enacted] weighs in the Port Authority’s favor” and further that, “[c]onsiderations of public policy, including the goals of punishment and deterrence of constitutional violations do not ‘dictate a contrary result.’” *Shifa*, 1997 WL 563301 at *4-5 (citing *City of Newport*). I agree with the analysis set forth by Judge Schwartz in reaching these conclusions and add only a few comments in response to the plaintiff’s arguments in this case.

The plaintiff relies heavily on *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30 (1994), where the Supreme Court, in finding that the Port Authority was not entitled to the Eleventh Amendment immunity afforded to States and State agencies, noted that the Port Authority is structured to be and is, in fact, financially self-sustaining. *Hess*, 513 U.S. at 45-53. It earns revenues in the form of tolls and fares from users of its crossings of the Hudson River, including the George Washington Bridge, the Lincoln Tunnel and the PATH system; in the form of rents and fees from tenants of its properties; and in the form of investment income.

That the Port Authority is financially self-sustaining is not sufficient reason to deny it immunity from punitive damages. The States of New York and New Jersey, with the agreement of Congress, have determined through their elected officials to create the Port Authority as a

means to satisfy the region's long term needs for terminal, transportation and other facilities of commerce. *See* N.J. Stat. Ann. § 32:1-1 (West 1997); N.Y. Unconsol. Laws § 6401 (McKinney 1979). The choice to structure the Port Authority to be financially self-sufficient is one made by elected representatives. It is accompanied by the requirement that the Port Authority operate only "for the benefit of the people of the States of New York and New Jersey" and "shall be regarded as performing an essential governmental function in undertaking the effectuation" of its purposes. N.J. Stat. Ann. § 32:1-35.4 (West 1997); N.Y. Unconsol. Laws § 6610 (McKinney 1979). While, as plaintiff correctly notes, tolls and fares are not the equivalent of taxes but are user fees, they are nonetheless broad-based, and they apply to public services of an essential nature for which few if any alternatives exist. Under all these circumstances, while the Port Authority is financially self-sufficient, it cannot be doubted that its continued financial health is a matter of concern to the public whose representatives created it.

Turning to the question of deterrence, the Supreme Court in *Hess* found that, because the Port Authority is a creature of two different states, its "public accountability is diffuse." *Hess*, 513 U.S. at 42. Its accountability is also more diffuse than that of a municipality in that voters cannot directly remove from office either its Executive Director or its commissioners. Rather, the governors of each State appoint the commissioners, *see* N.J. Stat. Ann. § 32:1-5 (West 1997); N.Y. Unconsol. Laws § 6405 (McKinney 1979), can exercise veto power over their actions, *see* N.J. Stat. Ann. § 32:1-17 (West 1997); N.Y. Unconsol. Laws § 6417 (McKinney 1979), and can remove the commissioners he or she appoints for cause, *see* N.J. Stat. Ann. §§ 32:1-5 (West 1997); N.Y. Unconsol. Laws § 6405 (McKinney 1979). Once again, however, that the Port Authority's accountability is more diffuse than that of a municipality is a choice made by elected

representatives. And its more diffuse accountability does not substantially vitiate the availability of those alternative methods of deterrence found significant in *City of Newport*. On balance, I conclude that the Port Authority should be afforded the same immunity from punitive damages afforded to municipalities under Section 1983.

Finally, although the parties have not separately addressed the Port Authority's immunity from punitive damages under plaintiff's common law claim, I agree with Judge Schwarz's analysis in finding that the Port Authority is immune under state law from punitive damages. *See Shifa*, 1997 WL 563301 at *4 n. 5.

CONCLUSION

Plaintiff's motion to amend the complaint is granted. The Port Authority's motion to strike plaintiff's claims for punitive damages is granted.

SO ORDERED.



NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
October 15, 1998